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NOT FOR CITATION
**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

HITACHI GLOBAL STORAGE
TECHNOLOGIES NETHERLANDS, B.V.,

Plaintiff,

v.

GS MAGIC, INC., et al.,

Defendants.

Case Number C 04-5460 JF
ORDER AWARDING DAMAGES
AND ATTORNEYS' FEES
FOLLOWING ENTRY OF DEFAULT
JUDGMENT

On March 31, 2006, this Court entered default judgment against all Defendants and directed Plaintiff to advise the Court whether Plaintiff would be submitting proof of damages and a request for attorneys' fees. On May 30, 2006, Plaintiff filed a motion seeking compensatory damages in the amount of \$23,600,000, plus enhanced damages of up to three times the compensatory damages, as well as attorneys' fees in the amount of \$934,348.75.

DAMAGES

Plaintiff's request for damages is governed by 35 U.S.C. § 284, which provides in relevant part as follows:

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with

1 interest and costs as fixed by the court.

2 When the damages are not found by a jury, the court shall assess them. In either
 3 event the court may increase the damages up to three times the amount found or
 4 assessed. Increased damages under this paragraph shall not apply to provisional
 5 rights under section 154(d) of this title.

6 Plaintiff requests \$23,600,000 in compensatory damages, which primarily represents lost profits
 7 as a result of Defendants' infringement and attempts to undercut Plaintiff in the market.
 8 Calculation of such profits necessarily involves some speculation. However, Plaintiff's
 9 projections are well-supported by the motion and accompanying declarations. Given the
 10 evidence in the record that Defendants' infringement of Plaintiffs' rights was willful, and the fact
 11 that Defendants defaulted in this case, the Court will draw all reasonable inferences in Plaintiffs'
 12 favor. Accordingly, the Court will award compensatory damages in the requested amount of
 \$23,600,000.

13 Enhanced damages of up to three times compensatory damages may be awarded when a
 14 party is found to have willfully infringed or to have acted in bad faith. 35 U.S.C. § 284; *Cyber*
 15 *Corp. v. FAS Technologies, Inc.*, 138 F.3d 1448, 1461 (Fed. Cir. 1998). Willful infringement
 16 does not mandate enhanced damages, however. *Id.* The primary consideration is the
 17 egregiousness of the defendant's conduct based on all the facts and circumstances. *Id.*

18 The Court has credited all of Plaintiff's evidence with respect to willfulness and lost
 19 profits, and it has relied heavily on this evidence in concluding that the magnitude of requested
 20 compensatory damages is appropriate in this case. However, in the absence of a developed
 21 record, the Court is not inclined to enhance those damages further in reliance on the same
 22 evidence of willfulness. Accordingly, the Court will deny the request for enhanced damages.

23 ATTORNEYS' FEES

24 Plaintiff's request for attorneys' fees is governed by 35 U.S.C. § 285, which provides that
 25 "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party."
 26 When considering whether to award attorney fees under this section, a court must determine
 27 whether there is clear and convincing evidence that the case is "exceptional" within the meaning
 28 of the statute and, if so, whether an award of attorney fees to the prevailing party is warranted.

1 *Interspiro USA v. Figgie Int'l Inc.*, 18 F.3d 927, 933 (Fed. Cir. 1994). “The prevailing party
 2 may prove the existence of an exceptional case by showing: inequitable conduct before the PTO;
 3 litigation misconduct; vexatious, unjustified, and otherwise bad faith litigation; a frivolous suit or
 4 willful infringement.” *Epcon Gas Systems, Inc. v. Bauer Compressors, Inc.*, 279 F.3d 1022,
 5 1034 (Fed. Cir. 2002). “Litigation misconduct and unprofessional behavior are relevant to the
 6 award of attorney fees, and may suffice, by themselves, to make a case exceptional.” *Id.*

7 The Court concludes that Defendants’ willful infringement of Plaintiff’s patents, as well
 8 as their conduct during the course of this litigation (including backing out of a settlement
 9 agreement, ceasing communications with their attorneys and failing to retain new counsel when
 10 ordered to do so by the Court), renders this an exceptional case within the meaning of § 285.
 11 While it declines to award enhanced damages for the reasons stated above, the Court concludes
 12 that Plaintiff is entitled to recover its attorneys’ fees based upon this record. Accordingly, the
 13 Court will award attorneys’ fees in the requested amount of \$934,348.75.

14 **ORDER**

15 The Court HEREBY ORDERS AND ADJUDGES that Plaintiff recover from Defendants
 16 compensatory damages in the amount of \$23,600,000 pursuant to 35 U.S.C. § 284 and attorneys’
 17 fees in the amount of \$934,348.75 pursuant to 35 U.S.C. § 285.

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 21 DATED: 6/2/06



22
 23 JEREMY FOGEL
 24 United States District Judge
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1 Copies of Order served on:

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